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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,238	12/15/2003	Benjamin Englander	P/1123-67	6371
2352	7590	11/30/2005	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			SHAVER, RICKY D	
		ART UNIT		PAPER NUMBER
				2872

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/737,238	ENGLANDER, BENJAMIN	
	Examiner Ricky D. Shafer	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
  - 4a) Of the above claim(s) 5-18 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 19 is/are rejected.
- 7) Claim(s) 20-22 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/26/2005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

1. Applicant's election of species "C", depicted by Fig. 7 and 8, and species "2", depicted by Fig. 6 in the reply filed on 09/12/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 5-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 09/12/2005.
3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, line 2, the use of the language "the brackets" is vague, indefinite and lacks proper antecedent basis.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Murgas ('883).

Murgas discloses a mirror mounting assembly for mounting a mirror on a vehicle

bulkhead comprising a mirror element (10), a main support arm (12,16) having a first end and a second end, adjacent connection (23), the mirror element being connected to the first end of the main support arm, the second end of the main support arm being mountable to the vehicle via connection (23), at least one bracket (36) configured to conform to an engine bay sidewall of the vehicle, the bracket having a vertical portion and two laterally extending flanges that extend at an angle from opposite ends of the vertical portion, a first one of the flanges of the bracket being connectable to the bulkhead of the vehicle in the engine bay, a first additional support arm (20) having a first end, adjacent connection (23), connected to the bracket and the second end, adjacent connection (24), connected to the main support arm, wherein the flanges extend in opposite directions from the vertical portion, note figures 1 to 3 along with the associated description thereof, except for the first one of the flanges having a through hole for receiving a fender mounting bolt.

It is well known to employ a through hole in a mounting bracket flange for receiving a mounting bolt in the same field of endeavor for the purpose of securing a bracket mounting flange to a bulkhead of an engine bay. Note, by example only, U.S. Patent 3,081,057 to Farnsworth, U.S. Patent 3,831,896 to Owens and U.S. Patent 4,158,451 to Lukey.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first one of the flanges of Murgas to include a through hole in the mounting bracket flange for receiving a mounting bolt so as to secure the mounting bracket flange to the bulkhead of the engine bay, as is well known in the art, in order to increase the stability of the mirror assembly, as well as reducing mirror vibrations.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee ('349).

Lee discloses a mirror mounting assembly for mounting a mirror on a vehicle bulkhead comprising a mirror element (12a), a main support arm (21a,76) having a first end, adjacent connection (71), and a second end, adjacent connection (67), the mirror element being connected to the first end of the main support arm, the second end of the main support arm being mountable to the vehicle via connection (67), at least one bracket (31,32) configured to conform to an engine bay sidewall of the vehicle, the bracket having a vertical portion and two laterally extending flanges that extend at an angle from opposite ends of the vertical portion (see column 3, lines 10 to 32), a first one of the flanges of the bracket being connectable to the bulkhead of the vehicle in the engine bay, via element (26), and a first additional support arm (23,24) having a first end connected to the bracket and the second end connected to the main support arm, wherein the main support arm has two legs (21a,76) that are at an angle to another, and wherein the flanges extend in opposite directions from the vertical portion, note figures 1 to 3 and 7 along with the associated description thereof, except for the first one of the flanges having a through hole for receiving a fender mounting bolt.

It is well known to employ a through hole in a mounting bracket flange for receiving a mounting bolt in the same field of endeavor for the purpose of securing a bracket mounting flange to a bulkhead of an engine bay. Note, by example only, U.S. Patent 3,081,057 to Farnsworth, U.S. Patent 3,831,896 to Owens and U.S. Patent 4,158,451 to Lukey.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first one of the flanges Lee to include a through hole in the mounting bracket flange for receiving a mounting bolt so as to secure the mounting bracket

flange to the bulkhead of the engine bay, as is well known in the art, in order to increase the stability of the mirror assembly, as well as reducing mirror vibrations.

8. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Barker ('122).

Barker discloses a mirror mounting assembly for mounting a mirror on a vehicle bulkhead comprising a mirror element (43), a main support arm (13',30) having a first end, adjacent connection (28), and a second end, adjacent connection (27'), the mirror element being connected to the first end of the main support arm, the second end of the main support arm being mountable to the vehicle via connection (27'), at least one bracket (11) configured to conform to an engine bay sidewall of the vehicle, the bracket having a vertical portion and two laterally extending flanges that extend at an angle from opposite ends of the vertical portion (see column 3, lines 44 to 57), a first one of the flanges of the bracket being connectable to the bulkhead of the vehicle in the engine bay via element (26), and a first additional support arm (13) having a first end connected to the bracket and the second end connected to the main support arm, wherein the main support arm has two legs (13',30) that are at an angle to another, and wherein the flanges extend in opposite directions from the vertical portion; Note figures 1 to 8 along with the associated description thereof, except for the first one of the flanges having a through hole for receiving a fender mounting bolt.

It is well known to employ a through hole in a mounting bracket flange for receiving a mounting bolt in the same field of endeavor for the purpose of securing a bracket mounting flange to a bulkhead of an engine bay. Note, by example only, U.S. Patent 3,081,057 to Farnsworth, U.S. Patent 3,831,896 to Owens and U.S. Patent 4,158,451 to Lukey.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first one of the flanges of Baker to include a through hole in the mounting bracket flange for receiving a mounting bolt so as to secure the mounting bracket flange to the bulkhead of the engine bay, as is well known in the art, in order to increase the stability of the mirror assembly, as well as reducing mirror vibrations.

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murgas ('883) in view of Malachowski ('490).

Murgas discloses all of the subject matter claimed, note the above explanation, except for explicitly stating that the bracket has a first flange having a width substantially larger than its length and a second flange the second having a width smaller than the width of the first lateral flange.

Malachowski teaches it is well known to use a bracket has a first flange having a width substantially larger than its length and a second flange the second having a width smaller than the width of the first lateral flange in the same field of endeavor for the purpose of attaching a mirror mounting assembly to a vehicle. (See elements 14 and 41a of Fig. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bracket(s) of Murgas to include a bracket has a first flange having a width substantially larger than its length and a second flange the second having a width smaller than the width of the first lateral flange, as taught by Malachowski in order to increase the force in which the mirror mounting assembly grips the vehicle.

10. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee ('349) in view of Malachowski ('490).

Lee ('349) discloses all of the subject matter claimed, note the above explanation, except for explicitly stating that the bracket has a first flange having a width substantially larger than its length and a second flange the second having a width smaller than the width of the first lateral flange.

Malachowski teaches it is well known to use a bracket has a first flange having a width substantially larger than its length and a second flange the second having a width smaller than the width of the first lateral flange in the same field of endeavor for the purpose of attaching a mirror mounting assembly to a vehicle. (See elements 14 and 41a of Fig. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bracket(s) of Lee ('349) to include a bracket has a first flange having a width substantially larger than its length and a second flange the second having a width smaller than the width of the first lateral flange, as taught by Malachowski in order to increase the force in which the mirror mounting assembly grips the vehicle.

11. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barker ('122) in view of Malachowski ('490).

Barker discloses all of the subject matter claimed, note the above explanation, except for explicitly stating that the bracket has a first flange having a width substantially larger than its length and a second flange the second having a width smaller than the width of the first lateral flange.

Malachowski teaches it is well known to use a bracket has a first flange having a width substantially larger than its length and a second flange the second having a width smaller than

the width of the first lateral flange in the same field of endeavor for the purpose of attaching a mirror mounting assembly to a vehicle. (See elements 14 and 41a of Fig. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bracket(s) of Barker to include a bracket having a first flange having a width substantially larger than its length and a second flange the second having a width smaller than the width of the first lateral flange, as taught by Malachowski in order to increase the force in which the mirror mounting assembly grips the vehicle.

12. Claims 20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky D. Shafer whose telephone number is (571) 272-2320. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RDS

November 28, 2005

  
RICKY D. SHAFER  
PATENT EXAMINER  
ART UNIT 2872